

SENATE No. 2771

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Third General Court
(2023-2024)

SENATE, May 9, 2024.

The committee on Advanced Information Technology, the Internet and Cybersecurity, to whom was referred the petitions (accompanied by bill, Senate, No. 34) of Jason M. Lewis, Paul W. Mark, John J. Cronin, Joanne M. Comerford and other members of the General Court for legislation to establish a comprehensive statewide policy concerning streaming entertainment services and the recovery of municipal costs for the management and maintenance of digital infrastructure, report the accompanying bill (Senate, No. 2771).

For the committee,
Michael O. Moore

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An Act to modernize funding for community media programming.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. The General Laws of 2022 are hereby amended by inserting after Chapter
2 166A the following chapter:- Chapter 166B.

3 Section 1. The purposes of this chapter are to

4 (a) establish a comprehensive statewide policy concerning compensation for the use of
5 digital infrastructure in the public rights-of-way;

6 (b) establish legislative findings that digital infrastructure in the public rights-of-way is of
7 valuable economic and public interest;

8 (c) establish standards which encourage a competitive environment for growth and
9 development of streaming entertainment services and which assure that streaming entertainment
10 services are responsive to the needs and interests of the local community;

11 (d) establish guidelines for the exercise of Commonwealth and local authority with
12 respect to the regulation of the commercial use of the public rights-of-way by entities that
13 provide and deliver streaming entertainment services;

14 (e) assure that streaming entertainment operators are encouraged to provide the widest
15 possible diversity of information sources and services to the public;

16 (f) establish an orderly process for the Department of Revenue to assess and recover
17 payments from streaming entertainment operators;

18 (g) establish an orderly process to collect unpaid assessments and monetary fines from
19 non-compliant streaming entertainment operators operating in the Commonwealth;

20 (h) protect the substantial interest of the Commonwealth in preventing false and
21 deceptive business practices; and,

22 (i) promote competition among streaming entertainment service operators and minimize
23 regulation that would impose an undue economic burden on streaming entertainment operators.

24 Section 2. Definitions.

25 For the purposes of this chapter, the following words shall have the following meanings:

26 “Commonwealth”, the Commonwealth of Massachusetts;

27 “cable operator”, any entity that is providing cable services under a franchise agreement
28 with a city, town or district and remitting a franchise fee to such city, town or district as
29 permitted by the Cable Communications Policy Act of 1984, 47 U.S.C. § 522, et seq.;

30 “gross revenues”, all revenue received directly or indirectly by a streaming entertainment
31 operator arising from, attributable to, or in any way derived from the sale of streaming
32 entertainment services in the Commonwealth. The term “gross revenues” shall not include bad
33 debts, investment income, refunded deposits, or any taxes on services furnished by streaming
34 entertainment providers and imposed directly upon any user by the local, state, federal or other
35 governmental unit;

36 “person”, an individual, partnership, association, joint stock company, trust, corporation,
37 or governmental entity;

38 “public, educational, or governmental access facilities or PEG access facilities”, facilities
39 and equipment for the use of channel capacity designated for public, educational, or
40 governmental use;

41 “streaming entertainment services”, any paid service that provides audio, video, or
42 computer-generated or computer-augmented entertainment and delivers such entertainment via
43 digital infrastructure to users and delivers such services through facilities located at least in part
44 in the public rights-of-way without regard to delivery technology, including internet protocol
45 technology or other intelligences. This definition does not include any cable service defined in
46 47 U.S.C. § 522(6) or any video programming provided by a commercial mobile service
47 provider defined in 47 U.S.C § 332(d) or provided solely as part of, and via, a service that
48 enables users to access content, information, electronic mail, or other services offered over the
49 public internet;

50 “streaming entertainment operator”, any company, entity, or organization that

51 (1) provides streaming entertainment services and delivers such entertainment via digital
52 infrastructure provided through facilities located at least in part in the public rights-of-way with
53 regard to delivery technology, including internet technology or other intelligences, and

54 (2) earns more than two-hundred and fifty thousand dollars (USD \$250,000.00) in gross
55 annual revenues from providing such services to users in the Commonwealth;

56 “video programming”, programming provided by, or generally considered comparable to
57 programming provided by, a television broadcast station.

58 Section 3. Authority of the Commonwealth to regulate streaming entertainment services
59 and collect compensation for the use of the public rights-of-way.

60 (a) Pursuant to the authority of the Commonwealth to regulate trade under Section 1 of
61 Chapter 93 and to promote economic competition under Section 4 of Chapter 93, and to regulate
62 business practices for consumer protection under Section 1 of Chapter 93A, the Commonwealth
63 shall regulate the commercial sale of streaming entertainment services to individuals and
64 businesses in the Commonwealth;

65 (b) pursuant to the authority of the Commonwealth to collect payments from commercial
66 operators doing business with individuals and businesses physically located in the
67 Commonwealth and to levy assessments under Section 1 of Chapter 58, the Commonwealth shall
68 collect payments from the private sector use of the public rights-of-way by imposing an
69 assessment upon streaming entertainment providers;

70 (c) nothing in this chapter shall limit or affect the authority of the Commonwealth or
71 local government or instrumentality thereof regarding ownership and control of public property
72 and public rights-of-way;

73 (d) no agency of the Commonwealth or local government shall have any authority to
74 regulate the rates charged by any streaming entertainment operator.

75 Section 4. PEG Access Facilities Revenue Advisory Board.

76 There shall be within the department of telecommunications and cable a PEG access
77 facilities revenue advisory board. The advisory board shall consist of: the commissioner of the
78 department of revenue or their designee, who shall serve as chair; the director of rural affairs or
79 their designee; the commissioner of the department of telecommunications and cable or their
80 designee; the president of Massachusetts Community Media, Inc. or their designee; and the
81 president of the New England Connectivity and Telecommunications Association or their
82 designee.

83 The advisory board shall meet not less than annually. The advisory board shall collect
84 industry data including, but not limited to: (i) historical and existing revenue levels for PEG
85 access facilities in the commonwealth; (ii) historical and current revenues paid by cable
86 operators as part of any franchise fee; (iii) historical and current streaming entertainment service
87 revenues derived from the sale or provision of streaming entertainment services to individuals
88 and businesses in the Commonwealth; and (iv) any additional information as requested by the
89 advisory board. The results of the data collected shall be reviewed and analyzed by the advisory
90 board annually and the board shall make a recommendation for a streaming entertainment
91 service assessment rate in its annual report that would, together with any revenue provided under

92 a franchise fee, provide each operator of PEG access facilities with at least the same level of total
93 revenue as the average of the three highest years of revenue for each operator of PEG access
94 facilities prior to the enactment of this chapter.

95 Annually, not later than December 31, the advisory board shall file a report of its
96 findings, conclusions and recommendations, including an assessment distribution table for each
97 operator of PEG access facilities, with the clerks of the senate and house of representatives, the
98 department of telecommunications and cable, and the department of revenue.

99 Not more than 30 days after receiving the annual report from the PEG access facilities
100 revenue advisory board under this section, the commissioner of revenue shall set an assessment
101 rate equal to the recommendation of the advisory board.

102 Section 5. Imposition and collection of an assessment for the use of the public rights-of-
103 way.

104 (a) A streaming entertainment operator shall pay an assessment equal to the assessment
105 rate set by the commissioner of revenue under section 4 of such streaming entertainment
106 operator's gross annual revenues derived from the sale or provision of streaming entertainment
107 services to individuals and businesses in the Commonwealth.

108 (b) The assessment authorized in this section shall be for each year, or part of each year,
109 that such streaming entertainment operator is engaged in the sale of streaming entertainment
110 services to individuals and businesses in the Commonwealth.

111 (c) A streaming entertainment operator shall file bi-annual financial statements reporting
112 its gross revenues derived in such period from the sale of streaming entertainment services to
113 individuals and businesses in the Commonwealth.

114 (1) Financial statements shall be filed with the Department of Revenue and shall not be
115 classified as a public record pursuant to Section 1 of Chapter 66;

116 (2) financial statements shall contain a complete accounting and itemization of gross
117 revenues derived from, or pertaining to, the sale or provision of streaming entertainment services
118 to individuals and businesses in the Commonwealth;

119 (3) financial statements shall conform to Generally-Accepted Accounting Principles
120 (GAAP) and shall be submitted in writing;

121 (4) for the period inclusive of January 1 through June 30, a streaming entertainment
122 operator shall submit a financial statement on or before August 15. For the period inclusive of
123 July 1 through December 31, a streaming entertainment operator shall submit a financial
124 statement on or before February 15 of the following year;

125 (5) streaming entertainment operators that fail to submit financial statements within thirty
126 (30) days of the aforestated deadlines shall be assessed a monetary penalty amount equal to one
127 percent (1%) of the gross revenues derived from, or pertaining to, the sale or provision of
128 streaming entertainment services to individuals and businesses residing in the Commonwealth
129 during the applicable time period;

130 (6) streaming entertainment operators that fail to submit financial statements within sixty
131 (60) days of the aforestated deadlines shall be assessed a monetary penalty amount equal to two

132 percent (2%) of the gross revenues derived from, or pertaining to, the sale or provision of
133 streaming entertainment services to individuals and businesses residing in the Commonwealth
134 during the applicable time period;

135 (7) any monetary penalty assessed upon a streaming entertainment operator for failure to
136 submit financial statements before the deadline shall be cumulative to the assessment rate set by
137 the commissioner of revenue under section 4.

138 (d) Subject to audit and revision pursuant to the Department of Revenue's authority in
139 Section 6, the Department of Revenue shall utilize the financial statement of a streaming
140 entertainment operator to assess an amount equal to the assessment rate set by the commissioner
141 of revenue under section 4 of such streaming entertainment operator's gross revenues derived in
142 such period from the sale or provision of streaming entertainment service to individuals and
143 businesses in the Commonwealth.

144 (e) Upon assessment by written notice of the Department of Revenue, a streaming
145 entertainment operator must submit payment to the Commonwealth within thirty (30) days of
146 such notice.

147 (1) Streaming entertainment operators that fail to submit payment within thirty (30) days
148 of the aforesated deadline shall be assessed a monetary penalty amount equal to two percent
149 (2%) of the gross revenues derived from, or pertaining to, the sale or provision of streaming
150 entertainment services to individuals and businesses in the Commonwealth during the applicable
151 time period;

152 (2) streaming entertainment operators that fail to submit remuneration of the assessment
153 within sixty (60) days of the aforesated deadline shall be assessed a penalty equal to three

154 percent (3%) of the gross revenues derived from, or pertaining to, the sale or provision of
155 streaming entertainment service to individuals and businesses in the Commonwealth during the
156 applicable time period;

157 (3) any monetary penalty assessed upon a streaming entertainment operator for failure to
158 submit payment before the deadline shall be in addition to the assessment of the assessment rate
159 set by the commissioner of revenue under section 4.

160 (f) In accordance with Section 8 of this chapter, the Commonwealth, local governments,
161 or instrumentalities thereof, may levy additional monetary and legal penalties upon any
162 streaming entertainment operator that fails to timely provide written financial statements or
163 remuneration of assessments.

164 Section 6. Right to audit financial records pertaining to assessable gross revenues.

165 (a) The Commonwealth shall have the right to conduct an audit or review of the records
166 reasonably related to the sources, amounts and computation of assessable gross revenues derived
167 from, or pertaining to, the sale or provision of streaming entertainment service to individuals and
168 businesses residing in the Commonwealth within the previous three (3) years.

169 (b) Within thirty (30) days of a written request, a streaming entertainment operator shall
170 provide the Department of Revenue with copies of financial records related to the review or audit
171 of assessable gross revenues derived from, or pertaining to, the sale or provision of streaming
172 entertainment services to individuals and businesses residing in the Commonwealth.

173 (c) In the event of an alleged underpayment, the Department of Revenue shall provide the
174 streaming entertainment operator with a written statement indicating the basis for the alleged

175 underpayment. The streaming entertainment operator shall have thirty (30) days from the receipt
176 of a statement regarding an alleged underpayment to provide the Department of Revenue any
177 written objection to the results of any assessable gross revenue review or audit, including any
178 substantiating documentation. Based on this exchange of information, the Department of
179 Revenue shall make a final determination of the underpayment(s), if any, within thirty (30) days
180 of the streaming entertainment operator's objection and shall provide the operator with written
181 notice of the determination.

182 (d) Any additional assessments due to the Commonwealth as a result of the assessable
183 gross revenue review or audit shall be paid to the Department of Revenue by the streaming
184 entertainment operator within forty-five (45) days from the date of written notification of the
185 final decision. If the assessable gross revenue review or audit shows that amounts have been
186 underpaid, then the streaming entertainment operator shall pay the underpaid amount plus
187 monetary fines equal to ten percent (10%) of the underpayment.

188 (e) A streaming entertainment operator adversely affected by any final action, or failure
189 to act, of the Department of Revenue that is inconsistent with this section may, within thirty (30)
190 days after such action or failure to act, commence an action in any court of competent
191 jurisdiction within the Commonwealth. The court shall hear and decide such action on an
192 expedited basis.

193 Section 7. Streaming Entertainment Fund

194 (a) There shall be a Streaming Entertainment Fund which shall consist of amounts
195 credited to the fund in accordance with this section. The fund shall be administered by the state

196 treasurer and held in trust exclusively for the purposes of this section. The state treasurer shall be
197 treasurer-custodian of the fund and shall have the custody of its monies and securities.

198 (b) The Streaming Entertainment Fund shall consist of: (i) revenues collected from the
199 assessment imposed by this chapter; (ii) revenue from appropriations or other money specifically
200 designated to be credited to the fund; (iii) interest earned on money in the fund; and (iv) funds
201 from private sources including, but not limited to, gifts, grants and donations received by the
202 Commonwealth that are specifically designated to be credited to the fund. Amounts credited to
203 the fund shall not be subject to further appropriation and any money remaining in the fund at the
204 end of a fiscal year shall not revert to the General Fund. The secretary of the Commonwealth
205 shall annually, not later than December 31, report on the activity of the fund to the clerks of the
206 Senate and House of Representatives and the Senate and House Committees on Ways and
207 Means.

208 (c) The Streaming Entertainment Fund shall make bi-annual distributions on March 1 and
209 September 1 of each year. On those dates, the Streaming Entertainment Fund shall allocate, with
210 no remainder left, all monies then held in the Fund according to the yearly distribution table in
211 the annual report of the advisory board under section 4.

212 (d) The Commissioner of Revenue or any official responsible, shall, without further
213 appropriation and upon certification of the Commissioner, distribute all sums allocated under (c)
214 under this section.

215 (e) All sums distributed under subsection (c) of this section shall be deposited in
216 accordance with Section 53F³/₄ of Chapter 44.

217 (f) No expenditures from the Streaming Entertainment Fund shall be made except to
218 provide funding for: (i) the operating expenses of the fund; (ii) legal and administrative expenses
219 incurred in enforcing the provisions of this chapter; and (iii) legal and administrative expenses
220 incurred in collecting any assessment due under this chapter.

221 (g) All sums appropriated under this chapter shall be expended in a manner reflecting and
222 encouraging a policy of nondiscrimination and equal opportunity.

223 (h) All officials and employees of an agency, board, department, commission or division
224 receiving monies under this chapter shall take affirmative steps to ensure equality of opportunity
225 and nondiscrimination in the internal affairs of state government, as well as in their relations with
226 the public, including those persons and organizations doing business with the Commonwealth.
227 Each agency, board, department, commission or division, in spending appropriated sums and
228 discharging its statutory responsibilities, shall adopt measures to ensure equal opportunity and
229 nondiscrimination in the areas of hiring, promotion, demotion or transfer, recruitment, layoff or
230 termination, rates of compensation, in-service or apprenticeship training programs and all terms
231 and conditions of employment.

232 Section 8. Judicial remedy.

233 (a) In accordance with Section 1 of Chapter 12, the Attorney General is authorized to
234 enforce this chapter. The Attorney General may, within seven (7) years, bring an action to
235 recover any unpaid assessments and monetary penalties, or enjoin the operations of any non-
236 compliant entity, in any court of competent jurisdiction.

237 (b) Any local government, or class thereof, or community media center adversely
238 impacted by the action, or failure to act, of any streaming entertainment operator under this

239 chapter, may, within seven (7) years, bring an action to recover any unpaid assessments and
240 monetary penalties, or enjoin the operations of any non-compliant entity, in any court of
241 competent jurisdiction.

242 SECTION 2. Municipal streaming fund.

243 Section 53 F³/₄ of Chapter 44 of the General Laws shall be amended by adding at the end
244 thereof the following new section: -

245 “Notwithstanding section 53 or any other general or special law to the contrary, a
246 municipality that accepts this section may establish in the treasury a separate revenue account to
247 be known as the PEG Access and Streaming Entertainment Funds, into which may be deposited
248 funds received in connection with assessments derived from streaming entertainment providers.
249 Monies in the fund shall only be appropriated to support public, educational or governmental
250 access media centers.”

251 SECTION 3. Effective date.

252 This act shall take effect upon its passage.